



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for money owed or compensation for damage or loss, return of the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

Background and Evidence

This tenancy began January 2009 with monthly rent of \$1250.00 and the tenant paid a security deposit of \$1250.00.

The tenant testified that the landlord originally requested a deposit of \$2500.00 and then changed the amount to \$1250.00. The tenant stated the he paid the landlord a full month's rent as security deposit and this amount was paid in cash to the landlord. The tenant stated he was never provided with a receipt for the cash payment. The tenant stated that he provided the landlord in writing, with his forwarding address on October 6, 2010 but that the landlord has only returned \$475.00 from the \$1250.00 security deposit.

The tenant stated that he understood it was impossible to verify the amount of the cash payment with no receipt however the tenant stated that he wanted the balance of the security deposit returned along with the additional \$625.00 he is entitled to.

The tenant is requesting return of double the security deposit in this application. The tenant is not seeking compensation for damage or loss and this part of the tenant's application is dismissed.

The landlord testified that the tenant did not pay him a security deposit of \$1250.00 but in fact paid him a security deposit of \$625.00. The landlord stated that the tenant agreed to the landlord keeping \$150.00 from the security deposit and returned \$475.00 to the tenant. The landlord stated that he had nothing in writing from the tenant that shows the

tenant agreeing to the landlord keeping part of the security deposit. The landlord stated that there were no move-in or move-out inspections completed. The landlord has not made an application through this office to retain all or part of the security deposit.

Law

Residential Tenancy Act **Section 38 Return of security deposit and pet damage deposit** speaks to:

- (1) *Except as provided in subsection (3) or (4) (a), within 15 days after the later of*
 - (a) *the date the tenancy ends, and*
 - (b) *the date the landlord receives the tenant's forwarding address in writing,**the landlord must do one of the following:*
 - (c) *repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*
 - (d) *make an application for dispute resolution claiming against the security deposit or pet damage deposit.*
- (2) *Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].*
- (3) *A landlord may retain from a security deposit or a pet damage deposit an amount that*
 - (a) *the director has previously ordered the tenant to pay to the landlord, and*
 - (b) *at the end of the tenancy remains unpaid.*
- (4) *A landlord may retain an amount from a security deposit or a pet damage deposit if,*
 - (a) *at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or*
 - (b) *after the end of the tenancy, the director orders that the landlord may retain the amount.*
- (5) *The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].*
- (6) *If a landlord does not comply with subsection (1), the landlord*
 - (a) *may not make a claim against the security deposit or any pet damage deposit, and*
 - (b) *must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*
- (7) *If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.*
- (8) *For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [service of documents] or give the deposit personally to the tenant.*

Analysis

Based on the documentary evidence and testimony I find that the tenant is entitled to return of double the security deposit. After receiving the tenant's forwarding address in writing the landlord, per Section 38 of the *Act*, neither returned the security deposit in full to the tenant nor made a claim against the security deposit through this office.

I find that the tenant has established a monetary claim for **\$775.00**.
(\$625.00-\$475.00=\$150.00) (\$625.00+\$150.00=\$775.00)

The tenant is also entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the tenant has established a monetary claim for \$775.00. The tenant is also entitled to recovery of the \$50.00 filing fee.

A monetary order in the amount of **\$825.00** has been issued to the tenant and a copy of it must be served on the landlord. If the amount is not paid by the landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 1, 2011

Residential Tenancy Branch